

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EUGENE MASON,

Plaintiff,

-against-

AMTRUST FINANCIAL SERVICES, INC. and,  
DAVID LEWIS,

Defendants.  
-----X

Civil Action No.: 19-CV-8364 (DLC)

**PROPOSED JOINT  
PRE-TRIAL ORDER**

Plaintiff, EUGENE MASON, (“Mason”) by his attorneys, JARDIM MEISNER & SUSSER, P.C., and Defendants and AMTRUST FINANCIAL SERVICES, INC. and DAVID LEWIS, (“AmTrust”) by its attorneys, WESTERMAN BALL EDERER MILLER ZUCKER & SHARFSTEIN, LLP, for their joint pre-trial Order, propose as follows:

**1. Caption:**

The full caption of the action is as follows:

-----X  
EUGENE MASON,

Plaintiff,

-against-

AMTRUST FINANCIAL SERVICES, INC. and,  
DAVID LEWIS,

Defendants.  
-----X

**2. Parties and Counsel:**

The names, addresses, telephone, and fax numbers of trial counsel are:

Counsel for Plaintiff

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Counsel for Defendants

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**3. Jurisdiction:**

The Parties' Statements as to the Basis of Subject Matter Jurisdiction:

Plaintiff's Amended Complaint invoked this court's federal question jurisdiction over the action pursuant to 28 U.S.C. 1331 as well as subject matter jurisdiction pursuant to 28 U.S.C. 1332(a). However, Plaintiff's federal question allegations have been dismissed and only the remaining contract dispute will be tried before this court. Plaintiff, Eugene Mason ("Plaintiff" or "Mason") is a citizen of the State of Connecticut. AmTrust Financial Services, Inc. ("AmTrust" or "Defendant") is a financial services corporation organized under the laws of the State of Delaware with its principal place of business in the State of New York. Therefore, because this action presents a claim for money damages by citizens of different states and the amount in controversy exceeds seventy-five thousand (\$75,000.00) dollars this court retains its subject matter jurisdiction pursuant to 28 U.S.C. 1332(a).

Pursuant to the *Erie* Doctrine, "a federal court in a diversity case must apply the substantive law of the forum state, including its choice-of-law rules". *Krauss v. Manhattan Life Ins. Co. of New York* 643 F.2d 98, 100 (2<sup>nd</sup> Cir. 1981) (citing *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817 (1938)). Here, this case was brought in New York, where AmTrust was domiciled. Throughout the proceedings, the parties have proceeded under the assumption that New York law applies and this sort of "implied consent...is sufficient to establish choice of law." *Id.* (citation

omitted). Thus, New York state substantive law will apply to this matter in conjunction with federal procedural law. *See Gasperini v. Center for Humanities, Inc.* 518 U.S. 415, 427, 116 S.Ct. 2211, 2219 (citing *Erie* 304 U.S., at 58 S.Ct. at 822 (1938)).

**4. Claims and Defenses:**

a. Summary of Claims of Plaintiff, Eugene Mason:

Plaintiff is entitled to bonus compensation called the Net Underwriting Bonus for the year 2018 as set forth in the Employment Agreement. AmTrust wrongfully withheld said bonus from Plaintiff as the Employment Agreement is a valid, binding and enforceable agreement by failing to pay the Net Underwriting Bonus. Plaintiff is entitled to recover from AmTrust the entirety of the Underwriting Bonus for the year 2018. Plaintiff is entitled to recover the bonus he received in stock valued at \$76,567.25 (50% of the bonus) for 2014-2017, which was taken away after he was terminated on July 17, 2019.

b. Summary of AmTrust's Defenses:

AmTrust will argue that Mason is not owed any bonus relative to Net Underwriting Income for the year 2018 because there was no such income generated for that year. AmTrust will rely on the arguments and defenses set forth in further detail in its accompanying pre-trial memorandum of law and in its proposed findings of facts and law. The first four causes of action in the Plaintiff's Amended Complaint will not be tried, as they have been dismissed.

**5. Trial Length:**

The parties anticipate that this bench trial will take one day.

**6. Consent to Magistrate Judge**

The parties have not consented to trial of the case before a Magistrate Judge.

**7. Stipulations:**

The parties agree that the substantive law of New York State applies to this diversity action under 28 U.S.C. 1332(a) and the *Erie* Doctrine.

The parties hereby stipulate to the following statements of fact:

- Mason was employed by AmTrust from September 26, 2013 until his termination on July 17, 2019 as Senior Vice President in Underwriting.
- Mason signed an Offer of Employment letter on September 27, 2013.
- The Offer of Employment letter contains language regarding Plaintiff's eligibility for certain bonus payments.
- Mason signed an Agreement to Bring Claims in Shortened Time Period and Waive Right to Jury Trial on July 6, 2016.

**8. Witnesses:**

The parties designate the following fact and expert witnesses whose testimony may be offered in their respective cases in chief:

A. For Plaintiff

i. Gene Mason, Plaintiff, the former SVP of Professional Lines at AmTrust E&S Insurance Services, Inc. His current address is 24 Canterbury Lane, Sandy Hook, CT 06482. Plaintiff Mason will testify as to his background, his employment with AmTrust, the Employment Agreement, and the economic damages he suffered and the bonus amount he is owed for 2018 under the Employment Agreement. Plaintiff's Mason's Declaration will be filed. He will testify in person or remotely as the Court may decide.

ii. Evan D. Bennett, Consultant, Insurance and Reinsurance, Plaintiff's Expert, who resides at 921 Longmeadow Dr., Geneva, IL 60134. Mr. Bennett will testify as to certain facts and positions taken in his expert report regarding the economic damages pertaining the compensation bonus due to Plaintiff Mason under the Employment Agreement between the parties. Mr. Bennett's Declaration will be filed. He will testify remotely.

iii. Paul Poppish, Former Vice-President at AmTrust and Plaintiff's Supervisor. (602) Spruce Court, Oswego, IL 60543. Mr. Poppish is expected to testify with regard to accounting information as to the profitability of AmTrust and the calculation of bonuses. Mr. Poppish will be subject to a Subpoena for his testimony. He will testify remotely.

B. For Defendant

i. Roni Schwartz – 59 Maiden Lane, 43<sup>rd</sup> Floor, New York, NY, 10038. Mr. Schwartz has been retained as AmTrust's expert actuary for trial. Mr. Schwartz is expected to testify that Mason did not earn a bonus in 2018, consistent with his declaration dated November 19, 2020 and the findings contained in his report dated November 9, 2020. He will testify in person (or remotely, as the Court may decide) rather than by deposition.

ii. Amy Hall – 59 Maiden Lane, 43<sup>rd</sup> Floor, New York, NY, 10038. Ms. Hall is the Senior Vice President, Human Resources, North America for AmTrust. Ms. Hall is expected to testify about Mason's Offer of Employment letter and bonus pay out, consistent with her declaration dated November 18, 2020. She will testify remotely.

iii. Eduardo Rivera – 59 Maiden Lane, 43<sup>rd</sup> Floor, New York, NY, 10038. Mr. Rivera is the Vice President of Finance, for AmTrust Financial Services, Inc. Mr. Rivera is expected to testify about why Mason did not earn a bonus in 2018, consistent with his

declaration dated November 19, 2020. He will testify in person (or remotely, as the Court may decide) rather than by deposition.

**9. Deposition Testimony:**

AmTrust will utilize the deposition testimony of Evan Bennett taken on November 16, 2020.

Plaintiff may use the deposition testimony of Evan Bennett taken on November 16, 2020.

**10. Exhibits:**

Plaintiff's Exhibits

<b>Objection/ No Objections</b>	<b>In Evidence</b>	<b>Plaintiff's Exhibit No. or Joint Exhibit</b>	<b>Bates Stamp Nos.</b>	<b>Description</b>
**		Plaintiff's Exhibit 1	MASON-001- MASON-006	Mason Employment Contract with AmTrust dated 9/26/13
		Plaintiff's Exhibit 2	MASON-012- MASON-014	Document Entitled Profitability Dynamics- Scenarios re Mason's Estimated Gross and Net results  Submit under Seal
		Plaintiff's Exhibit 3	MASON-027- MASON-070	E & S Final 05/31/18  Submit under Seal
		Plaintiff's Exhibit 4	MASON-077- MASON-085	AmTrust's Profit Spreadsheet with G. Mason's Notes  Submit under Seal
		Plaintiff's Exhibit 5	MASON-093	Actuarial Methodology  Submit Under Seal

**		Plaintiff's Exhibit 6	MASON-097	Agreement to bring Claims in Shortened Time Period and Right to Jury Trial – 7/6/16
		Plaintiff's Exhibit 7	MASON-100	AmTrust's Profit Spreadsheet with G. Mason's Notes  Submit under Seal
*		Plaintiff's Exhibit 8	MASON-101	Email from David Saks dated 8/26/16
		Plaintiff's Exhibit 9	MASON-102-MASON-104	Gene Mason Resume
		Plaintiff's Exhibit 10	MASON-121 MASON-140	Complaint in <i>SEC v. AmTrust Financial Services, Inc. and Ronald Pipoly</i>
**		Plaintiff's Exhibit 11	MASON-1023	Correspondence from K. Bowen, Recruiting Director, to Plaintiff dated 10/22/18
		Plaintiff's Exhibit 12	MASON-1024	Solium Statement regarding stock dated 9/30/19
**		Plaintiff's Exhibit 13	MASON-1025	AmTrust Chart re Bonus Paid  Submit Under Seal
		Plaintiff's Exhibit 14	MASON-1026	Portfolio and Reinsurance Facility Premium and Policy County  Submit Under Seal

		Plaintiff's Exhibit 15	MASON-1027	Shareworks Notification re Stock dated 6/17/15
**		Plaintiff's Exhibit 16	MASON-1028-MASON-1031	Restricted Stock Unit Agreement for May 2016 dated 6/23/16
		Plaintiff's Exhibit 17	MASON-1032-MASON-1033	Shareworks Account Summary for 2015 and 2016 dated 5/23/15 and 5/23/16
		Plaintiff's Exhibit 18	MASON-1034	Chart of calculations for bonus by G. Mason
		Plaintiff's Exhibit 19	MASON-1035-MASON-1036	Email chain with P. Poppish, G. Mason regarding report for professional liability claim report value as of 5/31/18
		Plaintiff's Exhibit 20	MASON-1037-MASON-1042	Emails chain C. Cirello and G. Mason
		Plaintiff's Exhibit 21	MASON-1052 MASON-1062	PL ES Loss Run – 01/31/17 Final  Submit under Seal
		Plaintiff's Exhibit 22	MASON-1063 MASON-1077	E&S – 01/31/18  Submit Under Seal
**		Plaintiff's Exhibit 23	MASON-1079 MASON-1095  AmTrust – 000052-000068	ES PL Claims 2020 Q2  Submit Under Seal
		Plaintiff's Exhibit 24	MASON-1096	Snapshot Amtrust 2018  Submit Under Seal
		Plaintiff's Exhibit 25	MASON-1098	Notable Loss Payments and Gross/Net Analysis



		Plaintiff's Exhibit 26	MASON-1099-MASON-1100	AmTrust Profit Spreadsheet 02193713  Submit Under Seal
*		Plaintiff's Exhibit 27	MASON-1102-MASON-1120	Evan Bennett expert report with annexed documents:  1. Resume of Evan D. Bennett  2. AmTrust Spreadsheet (MASON-1117-MASON-1118)  3. Bennett Spreadsheet Analysis (MASON-1120)  Submit Under Seal
*		Plaintiff's Exhibit 28	MASON-1021-MASON-1147	Transcript of Deposition of Evan Bennett
*		Plaintiff's Exhibit 29	Not Bates Stamped	Plaintiff's Answers to Interrogatories
*		Plaintiff's Exhibit 30	Not Bates Stamped	Defendant AmTrust's Response to Plaintiff's Request for Admissions
*		Plaintiff's Exhibit 31	Not Bates Stamped	Defendant AmTrust's Answers to Interrogatories
**		Plaintiff's Exhibit 32	AmTrust00001	AmTrust Chart of Loss and Loss Ratios  Submit Under Seal
**		Plaintiff's Exhibit 33	AmTrust00008-AmTrust000013	AmTrust – Restricted Stock Unit Agreement issued May 23, 2017
**		Plaintiff's Exhibit 34	AmTrust000014-AmTrust000021	AmTrust - Restricted Stock Unit Agreement issued May 23, 2015

**		Plaintiff's Exhibit 35	AmTrust-000022 AmTrust-000027	AmTrust-Restricted Stock Unit Agreement issued May 23, 2018
**		Plaintiff's Exhibit 36	AmTrust-000028- AmTrust-000032	AmTrust-Restricted Stock Unit Agreement issued May 23, 2016
**		Plaintiff's Exhibit 37	AmTrust-000052 AmTrust-000074	Snapshot of Loss Runs spreadsheet  Submit under Seal
*		Plaintiff's Exhibit 38	No Bates Stamp	Defendant's Expert Witness Rebuttal
		Plaintiff's Exhibit 39	No Bates Stamp	Plaintiff Mason's Declaration of November 20, 2020
		Plaintiff's Exhibit 40	No Bates Stamp	Evan D. Bennett's Declaration

Defendant's Exhibits

<u>Objection / No Objection</u>	<u>In Evidence</u>	<u>Defendant's Exhibit No.</u>	<u>Bates Stamp Nos.</u>	<u>Description</u>
**		<u>Defendant's A</u>	None.	Declaration of Roni Schwartz dated November 19, 2020
**		<u>Defendant's B</u>	None.	Declaration of Amy Hall dated November 18, 2020
**		<u>Defendant's C</u>	None.	Declaration of Eduardo Rivera dated November 19, 2020

**		<u>Defendant's D</u>	AmTrust 000002 - 000007	September 26, 2013 Offer of Employment letter from AmTrust to Mason, signed by Mason on September 27, 2013
**		<u>Defendant's E</u>	AmTrust  000033	Agreement to Bring Claims in Shortened Time Period and Waive Right to Jury Trial dated July 6, 2016 signed by Mason
**		<u>Defendant's F</u>	None.	"Bonus" Chart; Annexed as "Exhibit B" to the expert report of Roni Schwartz Report dated November 9, 2020
**		<u>Defendant's G</u>	None.	"Loss" Chart; Annexed as "Exhibit A" to the expert report of Roni Schwartz Report dated November 9, 2020
**		<u>Defendant's H</u>	AmTrust 000052 - 000074	Chart of Individual Cases; AmTrust Bates Stamped 52-74
**		<u>Defendant's I</u>	Mason 1021 - 1147	Deposition transcript of Evan D. Bennett dated November 16, 2020

Dated: New York, New York  
Uniondale, New York  
November 20, 2020

Respectfully Submitted,

JARDIM MEISNER & SUSSER, P.C.

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